

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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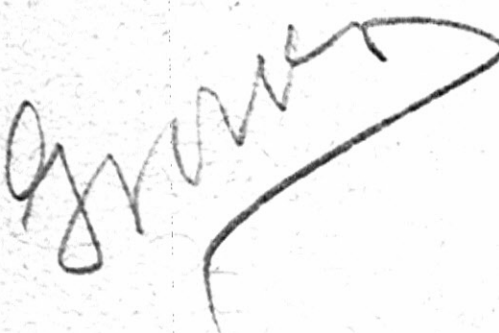
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TRANSCRIPT OF RECORD

United States Court of Appeals for the District of Columbia

APRIL TERM, 1934

 No. 6306

608

SPECIAL CALENDAR

NICHOLAS G. LELY, APPELLANT,

vs.

ABRAHAM KALINOGLU.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED SEPTEMBER 14, 1934.

PRINTED NOVEMBER 13, 1934.

United States Court of Appeals for the District of Columbia

APRIL TERM, 1934.

No. 6306

NICHOLAS G. LELY, APPELLANT,

vs.

ABRAHAM KALINOGLU.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1934.

United States Court of Appeals for the District of Columbia

No. 6306.

NICHOLAS G. LELY, Appellant,

vs.

ABRAHAM KALINOGLU.

1 [Stamp:] Filed Jan. 25, 1934. Theodore Cogswell,
Register of Wills, D. C., Clerk of Probate Court.

In the Supreme Court of the District of Columbia, Holding
Probate Court.

Administration No. 46076.

In re Estate of GEORGE KALINOGLU, Deceased, Also Known
as GEORGE KALIN.

Petition for Letters of Administration.

To the Supreme Court of the District of Columbia:

Your petitioner, Nicholas G. Lely, respectfully files this
petition for letters of administration and states to the court
as follows:

I.

That he is the duly accredited First Secretary of the Le-
gation of Greece at Washington, D. C., U. S. A., and is a
citizen and Acting Consul of Greece in said city and is
vested with the powers of a Consular Officer of the Repub-
lic of Greece, and files this petition as such, as will more
fully hereinafter appear.

II.

That said George Kalinoglu was, at the time of his death,
a citizen of the Republic of Greece and a resident of the

District of Columbia, residing at 309 N Street, N. W., and that said George Kalinoglu, or Kalin, departed this life December 25, 1933, near Towson, Maryland, while en route to New York City.

III.

That the only property left by decedent that has come to petitioner's knowledge after diligent search is the sum of \$1,653.65 on deposit at the Riggs National Bank (Seventh Street branch); also small amount of cash and personal effects in custody of the Towson Police Station, Towson, Maryland; and one-half interest in a certain lunch-
2 room located at 309 N Street, N. W., the other one-half being owned by Theodore Lazopoulos, his share valued at \$200.00.

IV.

The next of kin of the decedent, so far as it is known to your petitioner, is a surviving wife, namely Nathalia Kalinoglu, residing at Salonica, Greece, who, upon information and belief, is of age. Your petitioner is unable, without communication with the Foreign Office of his Government, to ascertain whether there are any other heirs surviving the decedent.

V.

That decedent, so far as your petitioner, after diligent inquiry, has been able to ascertain, left no debts save undertaker's bill in the amount of \$295.00 and current bills that may be due to merchants for supplies sold to the decedent during the operation of the restaurant, and possibly money due on rent all of which, to your petitioner's knowledge, should not exceed the sum of \$300.00.

VI.

That said decedent left no last will and testament to the best of your petitioner's knowledge, information and belief; that your petitioner has made diligent search and inquiry in such places, and among such persons as would be likely to disclose one if any existed.

VII.

Your petitioner is advised and believes, and therefore alleges, that, under and by virtue of the existing treaties be-

tween the United States of America and the Republic of Greece, and of the laws in such cases made and provided, pursuant thereto, the pertinent provision of which will fully appear by reference to the attached memorandum which is prayed to be read and considered as a part hereof, marked Exhibit "A", and of petitioner's aforesaid powers as a duly accredited and acting consular officer of the Republic of Greece, petitioner is entitled to have issued to him by this Honorable Court letters of administration upon the Estate of George Kalinoglu, deceased, upon his giving bond for the faithful performance of his trust as such administration.

3 Wherefore, the premises considered, your petitioner respectfully prays:

1. That process of this Court issue against said heirs-at-law and next of kin requiring them to answer the exigencies of this petition, including substituted service by publication if necessary.

2. That letters of administration be issued to petitioner in his official capacity as aforesaid upon his giving bond for the faithful performance of his trust in accordance with the laws in force in the District of Columbia in such cases.

3. For such other and further relief as the nature of the case may require and to the court may see just and proper.

NICHOLAS G. LELY,
First Secretary and Acting Consul of the Legation of Greece, Washington, D. C., U. S. A.

GEORGE C. VOURNAS,
Attorney.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Nicholas G. Lely, being first duly sworn under oath, says that he has read the foregoing petition by him subscribed as First Secretary and Acting Consul of the Legation of Greece at Washington, D. C., U. S. A., and knows the contents thereof; that the matters of fact therein stated upon his personal knowledge are true, and that those stated upon information and belief, he believes to be true.

NICHOLAS G. LELY.

Subscribed and sworn to before me this 23rd day of January, 1934.

LAURA M. SCOTT.

(Seal of Laura M. Scott, Notary Public, District of Columbia.)

My commission expires March 16, 1936.

EXHIBIT "A".

Treaty Between United States and Greece.

Signed November 19, 1902, ratified in 1903.

(Vol. 33, Statutes at Large, PP. 2122, 2129).

"In the case of the death of any citizen of the United States in Greece, or of a Greek subject in the United States, without having any known heirs or testamentary executors by him appointed, the competent local authorities shall give information of the circumstances to the consular officers of the nation to which the deceased belongs in order that the necessary information may be immediately forwarded to the parties interested.

"In all that relates to the administration and settlement of the estates, the consular officers of the high contracting parties shall have the same rights and privileges as those accorded in the United States of America and Greece respectively to the consular officers of the most favored nation."

The "most favored nation" with respect to the administration of estates of deceased nationals by its consular officials is that contained in the Treaty with Sweden, signed June 1, 1910, ratified in February, 1911, ratifications exchanged in March 1911. This Treaty is reported in 37 Statutes at Large, pages 1479, 1487, 1488, as follows:

"In the event of any citizen of either of the two contracting parties dying without will or testament, in the territory of the other contracting party, the consul-general, consul, vice-consul-general, or vice-consul of the nation to which the deceased may belong, or, in his absence, the representative of such consul-general, consul, vice-consul-general, or vice-consul, shall, so far as the laws of each country will permit and pending the appointment of an administrator and until

letters of administration have been granted take charge of the property left by the deceased for the benefit of his lawful heirs of creditors, and, moreover, have the right to be appointed as administrator of such estate.

5 "It is understood that when under the provisions of this Article any consul-general, consul, vice-consul-general or vice-consul, or the representative of each or either, is acting as executor or administrator of the estate of one of his deceased nationals, said officer, or his representative, shall in all matters connected with, relating to, or growing out of the settlement of such estates, be in such capacities as fully subject to the jurisdiction of the courts of the country wherein the estate is situated as if said officer or representative were a citizen of that country and possessed of no representative capacity whatsoever."

(Endorsement: Petition for Letters of Administration. Filed Jan. 25, 1934. Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.)

6 Law Offices of Reid & Vournas.

Hugh Reid, George C. Vournas, Clayton S. Spear.

Investment Building, Washington, D. C., Telephones National 5893, 5894.

Virginia Office: Arlington County Court House, Clarendon, Va. Telephone Clarendon 1463.

January 25, 1934.

Mr. Theodore Cogswell,
Registry of Wills,
Washington, D. C.

In re Administration of the Estate of George Kalinoglu.
Administration No. 46076.

DEAR SIR:

This is to advise you that with regard to the subject matter appearing in Paragraph 4 of the Petition of Mr. Nicholas G. Lely, to wit the ascertaining of the heirs and next of kin of the decedent, Mr. Lely has already written to the Ministry of Foreign Affairs requesting that an official in-

vestigation be conducted in Greece and a report forwarded as soon as possible. In addition to this official investigation, the writer has requested the National Bank of Greece, which institution has branches throughout Greece, to institute an investigation of its own and a certificate be forwarded by the local authorities in Greece setting forth in detail the next of kin of the decedent, George Kalinoglu.

It is the intention of this office, as the legal representative of the Acting Consul of Greece, to file a supplemental petition immediately upon the receipt of the requested information.

Very truly yours,

GEORGE C. VOURNAS.

GCV/nr.

(Endorsement: Letter from Atty. in re next of kin.)

7

Supplemental Petition.

To the Honorable the Justice of said Court:

Your petitioner, Nicholas G. Lely, respectfully represents to the Court as follows:

1. That he is the duly appointed and qualified administrator of George Kalinoglu, deceased, also known as George Kalin.

2. That the said decedent died intestate and a full list of his survivors and next of kin was not available at the time the petition for letters of administration was filed.

3. That a diligent search to locate the next of kin of the deceased has been conducted and your petitioner upon information and belief submits that the decedent left the following heirs at law and next of kin:

Nathalia G. Kalinoglu, widow;
John G. Kalinoglu, father;
Magdalene G. Kalinoglu, mother;
Caliopi G. Kalinoglu, sister;
Elizabeth G. Kalinoglu, sister;
Romanos G. Kalinoglu, brother;
Abraham Kalinoglu, brother;

all residents at Synikoismos Neapoleos, Odos Verrias, No. 26, Salonica, Greece, with the exception of the last named

who resides at No. 1129 Seventh Street, Northwest, Washington, D. C.

8 Wherefore, the premises considered, petitioner prays:

I. That paragraph four of the said petition for letters of administration be supplemented by paragraph three of this petition.

II. And that he may have such other and further relief as the nature of the case may seem to require and to the Court appear meet and proper.

NICHOLAS G. LELY.

GEORGE C. VOURNAS,
Investment Building,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, ss:

Nicholas G. Lely, being first duly sworn according to law, on oath deposes and says that he has read the foregoing supplemental petition by him subscribed and knows the contents thereof and that the facts therein stated upon his personal knowledge are true and those stated upon information and belief he believes to be true.

NICHOLAS G. LELY.

Subscribed and sworn to before me this 26th day of April, 1934.

(Seal of W. Cameron Burton, Notary Public, District of Columbia.)

W. CAMERON BURTON,
Notary Public, D. C.

(Endorsement: Supplemental Petition. Let this be filed this 30th day of April, A. D. 1934. Jennings Bailey, Justice. Filed April 30, 1934. Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.)

9 Upon consideration of the petition of Abraham Kalinoglou, it is, by the Court, this 25th day of April, A. D. 1934, ordered that Nicholas G. Lely, administrator, appear herein and show cause, if any he has, on Monday,

the 7th day of May, 1934, at ten o'clock A. M., why the order of the Court dated January 26, 1934, appointing him administrator of the above named estate, should not be revoked and his letters of administration dated February 20, 1934 surrendered and canceled, and why petitioner should not be appointed administrator of said estate in his place and stead; provided a copy of this rule and of the aforesaid petition, exclusive of the exhibits attached thereto, be personally served upon the said Nicholas G. Lely on or before the 30th day of April, 1934.

JENNINGS BAILEY,
Justice.

- 10 *Petition of Abraham Kalinoglou for Revocation of the Order or Decree of the Court Dated January 26, 1934, Appointing Nicholas G. Lely Administrator of Said Estate and for Revocation and Surrender of His Letters of Administration Dated February 20, 1934, and for Petitioner's Appointment as Administrator and for Letters of Administration Upon the Decedent's Estate, etc.*

Petitioner Abraham Kalinoglou, by permission of the Court first had and obtained to file this petition, respectfully represents to the Court as follows:

First. That he is an adult citizen of the United States, a resident of the District of Columbia, and files this petition in his own behalf.

Second. That heretofore, to wit, December 13, 1933, the above named decedent, George Kalinoglou, otherwise known as George Kalin, while residing at 309 "N" Street, Northwest, in the City of Washington, District of Columbia, was killed in an automobile accident at Towson, Maryland, and left surviving him his widow, Nathalie G. Kalinoglou, but no children or the descendants of any children, and his father and mother, Ioannis G. Kalinoglou and
11 Magdalene Kalinoglou, and the following named brothers and sisters, Romanos I. Kalinoglou, petitioner Abraham Kalinoglou, Elisabet Kalinoglou and Kalliopei Avakomorglue, all of whom are subjects of Greece except petitioner.

Third. That so far as petitioner knows and has been able to ascertain, said decedent died intestate, his estate con-

sisting of an interest in a lunchroom business conducted by him and his partner, Theodore Lazopoulos at 309 "N" Street, Northwest; \$1,653.65 on deposit to his credit in the Riggs National Bank, and an action against the operator and owner of said automobile in which he was killed, for damages.

That the amount of his debts, except \$1,000 which petitioner loaned him, are unknown to petitioner.

Fourth. That at the time of the death of said decedent petitioner was in Greece visiting his parents and returned to this country and this city approximately two months afterwards and immediately upon learning of the death of his brother. Prior to going to Greece petitioner was associated with his deceased brother in the conduct of said lunchroom business and he was well known to the decedent's said surviving partner and other Greeks patronizing said lunchroom.

Fifth. That on January 25, 1924, Nicholas G. Lely, representing himself as First Secretary of the Legation of Greece and Acting Consul of Greece in the District of Columbia, and vested with the powers of a Consular Officer of the Republic of Greece, filed in this Honorable Court a petition, in which he set forth the date of the death of the decedent, the fact that the decedent was a citizen and subject of the Republic of Greece, and the nature and character of his estate. He did not set forth in said
12 petition that the said decedent was survived by petitioner, his brother, who is one of his heirs at law and next of kin, and by reason of his being an adult citizen of the United States and a resident of the District of Columbia, competent to administer said estate.

That the said Nicholas G. Lely attached to his petition a copy of the treaty existing between the United States and Greece, 33 Stat. 2122, reading, in part, as follows:

"In the case of the death of any citizen of the United States in Greece, or of a Greek subject in the United States, without having any known heirs or testamentary executors by him appointed, the competent local authorities shall give information of the circumstances to the consular officers of the nation to which the deceased belongs in order that

the necessary information may be immediately forwarded to the parties interested.

“In all that relates to the administration and settlement of the estates, the consular officer of the high contracting parties shall have the same rights and privileges as those accorded in the United States of America and Greece respectively to the consular officers of the most favored nation.”

Sixth. That upon the presentation of the said petition by the said Nicholas G. Lely, this Honorable Court on January 26, 1934, passed an order appointing him administrator of said estate and directed that letters of administration issue to him upon his filing in this cause an undertaking, to be approved by the Court, and the penalty of \$2,500, and said undertaking having been approved and filed, this Honorable Court on February 20, 1934, granted letters of administration upon said estate to the said Nicholas G. Lely, and he is now engaged in the administration of said

estate. That the appointment of the said Nicholas
13 G. Lely as administrator of said estate, as aforesaid, was made without any notice whatsoever to petitioner or to decedent's widow, parents and other brother and sisters.

Seventh. Petitioner avers that the decedent left this city and country about the 5th day of June, 1929, and by a paper-writing of that date, to which the decedent's surviving partner, Theodore Lazopoulos, was a party, the decedent appointed petitioner as his attorney and agent and in his behalf to represent him and his interest in said lunch-room business at 309 "N" Street, Northwest, during his absence, and he further avers that he was well known to the said Theodore Lazopoulos, he having assisted in the operation of said business for approximately three years and having loaned decedent \$1,000 with which to purchase and acquire said half interest in said business, which loaned money was repaid.

Eighth. Petitioner is advised by counsel and upon such advice avers that the appointment of the said Nicholas G. Lely was improvidently made inasmuch as the treaty aforesaid provides and contemplates that the Consular Officer of the Republic of Greece shall be appointed administrator

of the estate of a subject of Greece only in the event of his death "without having any known heirs, or testamentary executors by him appointed", whereas the fact is that petitioner was well known to be the brother of the decedent and believes his whereabouts was known to the decedent's surviving partner, Theodore Lazopoulos.

Ninth. By reason of the facts and circumstances aforesaid, petitioner is further advised by counsel and upon such advice avers that he has the right, under the law, to
14 administer the estate of the decedent and that he had such right at the time of said Nicholas G. Lely's appointment and qualification, and he further informs the Court that it is the desire and wish of decedent's father, Ioannis G. Kalinoglou, and widow, Nathalie G. Kalinoglou, that he be appointed such administrator, and he files herewith as a part hereof power of attorney written in Greek and translated in English, to his appointment as administrator; the decedent's father and widow being the only persons, except creditors of said estate, entitled to receive his estate under the laws of the District of Columbia.

Tenth. By reason of the facts and circumstances aforesaid, all of which petitioner expects to establish by competent evidence, if necessary, he is advised by counsel and upon such advice avers that he is entitled to have an order made by this Honorable Court revoking the order of January 26, 1934, appointing said Nicholas G. Lely administrator, and revoking and ordering the surrender of the letters of administration issued to him on February 20, 1934, and to require him to account to his successor to be appointed by this Honorable Court for the decedent's estate which has come into his possession.

Eleventh. Petitioner is further advised by counsel and upon such advice avers that by reason of the aforesaid facts and circumstances, he has the right to be appointed administrator of the decedent's estate and to obtain letters of administration thereon, he hereby tendering himself ready to give undertaking, with satisfactory surety to be approved by the Court, in such penalty as the Court may require, conditioned for the faithful performance of his trust, and he agrees to serve as such administrator without compensation.

15 *Twelfth.* Petitioner is further advised by counsel and upon such advice avers that he has the right to

have a rule issued by this Honorable Court directed to the said Nicholas G. Lely, requiring him to appear and show cause, if any he has, why he should not, for the reasons stated in this petition, be removed as administrator of said estate, the order of January 26, 1934, revoked and his letters of administration dated February 20, 1934, surrendered and canceled.

Being without any remedy in the premises save through the aid and intervention of this Honorable Court, petitioner prays:

1st. That a rule be issued and served upon Nicholas G. Lely, requiring him to appear and show cause why he should not be removed as administrator of said estate, the order of January 26, 1934 appointing him administrator revoked, and his letters of administration of February 20, 1934 surrendered and canceled.

2nd. That upon such hearing, an order be made revoking said order of appointment and requiring the surrender and cancellation of said letters of administration, and also requiring the said Nicholas G. Lely to account to his successor for the estate of the said decedent which has come into his possession.

3rd. That petitioner be appointed administrator of said estate and that letters of administration issue to him upon his filing an undertaking, with approved surety, in such penalty as the Court may require, conditioned for the faithful performance of his trust.

4th. That he may have such other and further relief in the premises as the Court deems proper.

ABRAHAM KALINOGLU.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing Petition by me subscribed and I know the contents thereof; that the facts therein stated as of my own personal knowledge are true and those stated as upon information and belief I believe to be true.

ABRAHAM KALINOGLU.



Χρονιάς 4978.

Πηρεζούσιον

Ἐν Θεσσαλονίκῃ σήμερον τὴν δευτέραν ἑορτήν τοῦ
 μηνὸς Μαρτίου τῷ χιροκίῳ ἐπαυροσαστοῦ ἱε-
 ρουστοῦ τετάρτου ἔτους ἡμέραν καὶ ἐβδόμητον Πα-
 ρασκευὴν καὶ ἐν τῇ οἰκίᾳ τοῦ Ἰωάννου Καζίνοχρον
 κτηματίου κατοικοῦντος Θεσσαλονίκης κλημέντη ἐκ τῶν ἐν τῷ συνο-
 κισμῷ Μασσούρειος καὶ ἐν τῇ οἰκίᾳ Βερραίου ἀφ' ἑαυτοῦ 26 ἔδωκεν κτηνὴν
 μεγάλην σήμερον ἡμέραν ἑαυτοῦ καὶ συμβολαιογράφου Θεσσαλονίκης Πανα-
 γιώτου δούλαδιον Στεφανίδου κατοικοῦντος ἐκ τῶν ἐν τῷ συνοκισμῷ
 καὶ τῶν γινωσκόντων μοι καὶ μὴ ἐξαργυρίων μαρτύρων συγγενῶν ἑξήκων ἑκατῶν
 ἀμφοτέρω κατόπιν Θεσσαλονίκης καὶ Κωνσταντίνου Στεφάνου Ἰωαννίδου
 κατοικοῦντος καὶ Ἀναστασίου Ἀποστόλου Παλαιοντόπου ἀργουρίου ἐν
 γανιούδηναι σὺ γινώσκῃ μοι καὶ τῶν μαρτύρων καὶ μὴ ἐξαργυρίων αὐτῶν
 Ἰωάννης Γεωργίου Καζίνοχρον κτηματίας 2) Μαγδαληνὴ σύζυγος Ἰωάν-
 νου Γεωργίου Καζίνοχρον τὸ γένος Προδρόμου ἐκ τῶν Καζίνοχρον συνοδιόποι-
 να 3) Μαδαρία χήρα Γεωργίου Καζίνοχρον συνοδιόποινα τὸ γένος
 Λουκᾶ Μικαυλίδου 4) Παχχιόπη σύζυγος Παρασκευᾶ Ἀθανά-
 μοχρον τὸ γένος Ἰωάννου Καζίνοχρον συνοδιόποινα 5) Ρωμανὸς
 Ἰωάννου Καζίνοχρον μικροπνευματίας καὶ 6) Ἐλισάβετ θυγατέρα
 Ἰωάννου Καζίνοχρον συνοδιόποινα ἀπαιτῶν καὶ τῶν καὶ τῶν καὶ τῶν καὶ τῶν
 νῦν, ἐν τῷ συνοκισμῷ Μασσούρειος διαμένοντα, καὶ ἐλάχων ἀπὸ
 ἀπὸ κοινοῦ καὶ ἐν συγκλίνον ἢ ἡμέμνοι κληρονόμοι τοῦ ἀποβιάν-
 σαντος ἐν Οὐρασιελῶνι καὶ Ἀμερικῇ ἐκ τῶν κληρονόμων δυνάστημε-
 ναι Γεωργίου Ἰωάννου Καζίνοχρον ἐκ τῶν ἀπαιτῶν ἀποκεδισθῆναι καὶ δι-
 ρῆσθαι τῶν κληρονόμων τῶν ἀντιπροσώπων τῶν καὶ τῶν κληρονόμων

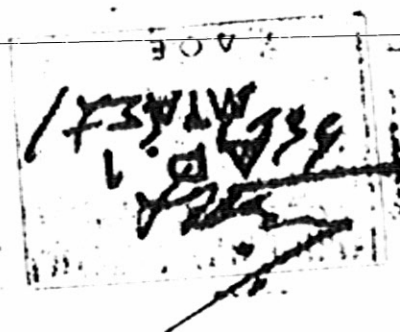
ἔχουσιν οὐ μόνον τοῦ παρόντος υπηρεφουσίου ἐν αὐτῇ γίνονται
 καὶ ὅτι καὶ ἐν τῶν ἐντοχίων Μαδαγία χώρα Γεωργίου Καζινο-
 χου καταγγέλλει ἐπὶ υπηρεφουσίου καὶ Ἀβραάμ Καζινοχου
 ὅπως ἐκ κτηρονομίας μερίδιόν της ἐν αὐτῇ ἐκμεταλλεύονται
 παριούσης ἐπὶ ἀποκλειστικῶς οὐχί της Γεωργίου Καζινοχου
 καταδίδει ἐν ὀνόματι της ἐπὶ τὸ ἐκτὸς ὑποκατάσταται τοῖς
 ἔθνεσιν Ἰσραήλ καὶ ἔλλαδος μετὰ καὶ ἐντοχίᾳ ὅπως καὶ καταδίδει
 οἱ κτηνοὶ καὶ ἐν ὀνόματι της διαβιβάσθῃ ἐπὶ τὸ ἐκτὸς οὐκ ἐκμεταλλεύονται
 καὶ ὑποκατάσταται καὶ ἔθνεσιν Ἰσραήλ καὶ ἔλλαδος.
 Εἰς τὸν ἀρχαῖον διαδωκέναι μὴ καὶ αὐτὴ καὶ ἐξ ὧν καὶ
 αὐτοχράτος δραχμὴ εἰς **ἑξῆς** πρὸς βεβαίωσιν συνεσταθῇ
 τὸ παρὸν ἀνεγνώσθαι φρονιμῶν καὶ βεβαιῶν ἐκδοχράτος
 καὶ παρ' ὅσον νομίμως καὶ ἐκτελεσθῇ τῶν ἰσχυρῶν καὶ Μαδαγί-
 νης Καζινοχου δηλωσάσης γραμμάτων ἀγνοίαν.

Οἱ ἐντοχίαι.	Οἱ μάρτυρες.
Μαδαγία Γ. Καζινοχου	Κωνστ. Σαουφίδης
Καζιόπη Αβαιόμοχου	Αν. Παπαδόπουλος
Ἰωνάκης Καζινοχου	ὁ δερμηνεύς.
Ρωμῆος Καζινοχου.	Γεώργιος Καζινοσταυρίδης
	ὁ συμβολαιογράφος.

(ΤΣ). Παναγιώτης Σιμωνίδης
 διὰ τὴν ἀκρίβειαν τῆς ἀναγραφῆς
 ἀναγνωρίσκει αὐτὸν ὁ αὐτὸς συμβολαιογράφος

Ἐπισημαίνεται τὸ γνήσιον τῆς ἐκδοχράτος τοῦ συμβολαιογράφου
 Θεοφάνους Παναγιώτου Σιμωνίδου. Οἰκιστὴν

ἐν Αθήναις τῇ 17^ῃ Μαρτίου 1934
 ὁ Προδρόμος τῶν Ἑλλήνων
 [Signature]



Vu pour la légalisation de la signature
de *M^r Pappadopoulos President*
du Tribunal de 1^{re} Instance
Thessaloniki *17 Mars* 1934

LE
GOUVERNEUR GÉNÉRAL DE LA MACEDOINE

ΔΙΑΓΡΑΦΗ
Α. 1
ΑΙΑΣ



Subscribed and sworn to before me this 25th day of April, A. D. 1934.

[Seal of Theresa Buckhantz, Notary Public, District of Columbia.]

THERESA BUCKHANTZ,
Notary Public, D. C.

GEORGE C. GERTMAN,
Attorney for Petitioner,
American Security Building,
730 15th Street, Washington, D. C.

(Here follow photolithographed pages 17-20.)

21 American Consular Service.

REPUBLIC OF GREECE, CITY OF SALONIKI,
Consulate of the United States of America, ss:

I, Donal F. McGonigal, Vice Consul of the United States of America at Saloniki, Greece, duly commissioned and qualified, do hereby certify that, to the best of my knowledge and belief, the signature subscribed to the document hereto annexed, i. e. Power of Attorney No. 4978 dated March 16, 1934, executed by Nathalia Georgiou Kalinoglou, Kalliopie Avakomoglou, Elisavet Kalinoglou and Romanos Kalinoglou in favor of Avraam Ioannou Kalinoglou of Washington, D. C. to act for them in the settlement of the estate of Georgios Ioannou Kalinoglou, deceased, is the signature of: J. Lazarides, Director of the Government General of Macedonia, at Saloniki, Greece, and that by virtue of said office he is empowered to certify, under the seal of the Government General of Macedonia at Saloniki, Greece, to the authenticity of the signatures and to the competency of officials of the Government General of Macedonia; and that the seal accompanying said signature is the seal of the Government General of Macedonia at Saloniki, Greece.

This Consulate assumes no responsibility for the contents of the attached document.

Witness my hand and the seal of the Consulate of the United States of America at Saloniki, Greece, this 17th day of March, in the year 1934.

[SEAL.] DONAL F. MCGONIGAL,
Vice Consul of the United States of America.

Service No. 185.

Fee -.00, collected in U. S. Cy.

22 [Green Republic Stamp
of 13 Drahas affixed.]

A. M. 38286.

No. 4978.

Power of Attorney.

At Saloniki, Greece, this 16th day of March in the year of 1934, day of the week Friday, and at the house of Ioannou Kalinoglou, property owner and resident of Saloniki, located at 26 Berroia Street in the district of Neapolis, I, the undersigned, Panagiotis Efstathion Philippidis, duly commissioned and qualified Notary Public, resident of Saloniki, was asked to call, and I did go to the house of said Ioannou Kalinoglou, and there and before me and in the presence of two witnesses well known to me and unexemptable citizens of Greece, both competent and qualified residents of Saloniki, namely Mr. Constantinou Stefanou Iosifidis, a grocer, and Anastasiou Apostolou Perpadopaulou, a baker, there appeared the following known to me and the witnesses and unexemptable: 1—Mr. Ioannis Georgiou Kalioglou, property owner, 2—Magdalene, wife of Ioannou Georgiou Kalinoglou, nee Prodeouron Spiroglou, housewife, 3—Nathalia, widow of Georgiou Kalinoglou, housewife, nee Louka Micharlidou, 4—Kalliopei, wife of Paroskeva Avakomorglou, nee Ioannou Kalinoglou, housewife, 5—Romanos Ioannou Kalinoglou, a peddler, and 6—Elisavet, daughter of Ioannou Kalinoglou, housewife, all six of them residents of Saloniki and living in the district of Neapolis, they did declare to me that in common and in full accord as legal heirs of the deceased in Washington, D. C. U. S. A., from an automobile accident George Ioannou Kalinoglou, restaurateur, do hereby appoint and empower as their general representative and agent and to answer for them Mr. Araam Ioannou Kalinoglou, restaurateur, now resident of Washington, D. C., U. S. A., whom they authorize empower, and further instruct to collect and receive from those responsible and liable, the indemnity due from the death caused by the automobile accident to their kin, George Ioannou Kalinoglou, to act in any necessary way to effect the collection of this indemnity, either by in-

23 stituting court action or by settlement outside of court giving proper receipt of settlement to collect whatever sum of money in any form there has been deposited in the name of the deceased George Kalinoglou, in any bank in U. S. giving proper receipt for any sum collected, to take over and possess in his jurisdiction real or personal property belonging to the deceased George Kalinoglou, and in general take possession and administer for the interest and benefit of the assigning beneficiaries the abandoned property, real and personal, of the deceased George Kalinoglou, giving to every third party any receipt or document incidental to the settlement of the estate, and, if necessary, appoint fully empowered attorneys at law for the purpose of legal liquidation.

Hereto is mentioned that because two of the assignors of this Power of Attorney, Ioannis Georgiou Kalinoglou and Magdalene, wife of Ioannou Georgiou Kalinoglou, do not understand and speak well the Greek language, but do understand and speak the Turkish language, they have had with them from the very beginning of the transcription of this document their entrusted Mr. Georgios Stavrou Hadjistavridou, cheese maker, and resident of Saloniki, residing at No. 6 Kanoni Street, known to me and unexemptable, whom I did cause to swear on the Holy Bible the interpreter's oath, and who did interpret and translate to me truthfully the true will and desire of the aforestated two and again translated to them the true translations of the contents of the present document of Power of Attorney.

Finally it is also mentioned that one of the assignors of this document of Power of Attorney, namely Nathalia, widow of the deceased George Kalinoglou, instructs and directs her agent Arraam Kalinoglou that the part belonging to her from the estate left by her deceased husband, George Kalinoglou, he shall deposit in her name in the branch office of the National Bank of Greece in America with instructions to said bank, and the money thus deposited be immediately transferred to the branch of the National Bank of Greece at Saloniki for her disposal.

24 I have collected for my services and revenue expenses for transcription of this copy the sum of two hundred fifteen drahmas (215) and in consideration this present document has been transcribed, properly read and verified, and is legally signed by all the undersigned, except

Ioannou and Magdalene Kalinoglou, who, as aforementioned, admitted illiteracy.

The assignors: Nathalia G. Kalinoglou, Kalliopie Avakomoglou, Elisavet Kalinoglou, Romanos Kalinoglou.

Witnessed by: Constantine Iosifidis, Au. Papadopaula.

The Interpreter: George Hadjistavridou.

The Notary Public: (T. W.) Panagiotis Philippidis, for the correctness of this copy, at Saloniki, the same day.

(Signature and Seal of)

PANAGIOTIS PHILIPPIDIS.

It is hereby certified that the signature of Panagiotis Philippidis, Notary Public of Saloniki, is genuine.

Saloniki, March 17, 1934.

Signed: J. PAPADOPOULOS,
Chief Justice.

[Greek Public Stamp 1 dra-mas affixed.]

Certification: for the legalization of the signature of Mr. Papadopanles, president of the tribunal of the 1st session.

Saloniki, March 17, 1934.

Signed: J. LAZARIDES,
The Governor General of Macedonia.

[Greek Republic Stamp of 1 drahmas affixed.]

REPUBLIC OF GREECE, CITY OF SALONIKI,

Consulate of the United States of America, ss:

I, Donal F. McGonigal, Vice Consul of the United States of America at Saloniki, Greece, duly commissioned and qualified, do hereby certify that, to the best of my knowledge and belief, the signature subscribed to the document hereto annexed, i. e. Power of Attorney No. 4978 dated March 16, 1934, executed by Nathalia Georgiou Kalionoglou, Kalliopie Avakomoglou, Elisavet Kalinoglou. And Romanos Kalinoglou in favor of Avraam Ioannou Kalinoglou of Washington, D. C. to act for them in the settlement of the estate of Georgios Ioannou Kalinoglou, deceased, is the signature of: J. Lazarides, Director of the

Government General of Macedonia, at Saloniki, Greece, and that by virtue of said office he is empowered to certify, under the seal of the Government General of Macedonia at Saloniki, Greece, to the authenticity of the signatures and to the competency of officials of the Government General of Macedonia; and that the seal accompanying said signature is the seal of the Government General of Macedonia at Saloniki, Greece.

This Consulate assumes no responsibility for the contents of the attached document.

Witness my hand and seal of the Consulate of the United States of America at Saloniki, Greece, this 17th day of March in the year 1934.

[SEAL.] DONAL F. McGONIGAL,
Vice Consul of the United States of America.

Service No. 185.

Fee \$2.00 collected in U. S. Cy.

(Endorsement: Rule to Show Cause. Filed Apr. 25, 1934. Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court. Petition for revocation of appointment of Nicholas G. Lely as Administrator, etc. Leave to file granted. Jennings Bailey Justice. Filed Apr. 25, 1934. Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.)

26 *Answer to Rule to Show Cause and for the Purpose
 Thereof to the Bill of Complaint.*

The answer of Nicholas G. Lely, administrator of the above estate, to the Rule to Show Cause herein and for the purpose thereof to the Bill of Complaint herein against him exhibited, respectfully shows:

1. He neither admits nor denies the allegation in paragraph 1 of the Bill of Complaint, but demands strict proof thereof.

2. Respondent admits the allegations in paragraph 2, with the exception of the citizenship of petitioner, of which respondent has no knowledge.

Further answering said paragraph, respondent says that the date of death of George Kalinoglu was December 24, 1933.

3. Respondent admits the allegations of paragraph 3 of said Rule to Show Cause, with the exception of the alleged indebtedness of the decedent to the petitioner, which respondent upon information and belief denies.

4. Answering paragraph 4, respondent upon information and belief denies petitioner's allegations. Further answering said paragraph, respondent says upon information and belief that the petitioner departed for Greece in May, 1932, for the purpose of getting married and establishing a permanent residence there.

Answering said paragraph further, respondent states upon information and belief that petitioner was not and has never been associated in the conduct of the above mentioned lunch room at 309 M Street, Northwest, subsequent to the year 1931.

27 Answering said paragraph further, respondent says that, after exhaustive investigation by the respondent and his counsel, it was found that no Greeks or persons of Greek descent, other than the co-partner Theodore Lazopoulos, patronized said lunch room, the same being exclusively patronized by persons of negro blood.

5. Answering paragraph 5 of said petition, respondent admits that he is the First Secretary of the Greek Legation and Acting Consul of Greece in the District of Columbia, and that he filed a petition for letters of administration covering this estate.

Answering said paragraph further, respondent states that all the information that he was able to secure regarding the heirs at law and next of kin of decedent is set forth in paragraph four of his petition for letters of administration and, upon communicating with his Government, a supplemental petition was filed setting forth in detail the heirs at law and next of kin of the decedent, as follows: Nathalia G. Kalinoglu, widow; John G. Kalinoglu, father; Magdalene G. Kalinoglu, mother; Caliopi G. Kalinoglu, sister; Elizabeth G. Kalinoglu, sister; Romanos G. Kalinoglu, brother, and Abraham Kalinoglu, brother, all residents at Synikoismos Neapoleos, Odos Verrias, No. 26, Salonica, Greece, with the exception of the last named who resides at No. 1129 Seventh Street, Northwest, Washington, D. C.

6. Respondent admits the allegations of paragraph 6 of said petition insofar as they refer to his appointment as

administrator of said estate. However, he denies that no notice was given to the widow and parents of the decedent, as the usual procedure of immediately forwarding notification to the next of kin through the Greek Government upon the death of a Greek national in the Consular jurisdiction, was strictly followed in this case.

7. Answering paragraph 7 of the petition, respondent neither admits nor denies the allegations contained therein, but demands strict proof thereof.

28 8. Answering paragraph 8 of the petition, respondent is advised by counsel and so submits to this Honorable Court that said paragraph contains no allegation of new facts but, if anything, amounts to a conclusion of law which, as such, is incorrectly stated.

9. Answering paragraph 9 of said petition, respondent says that he is advised by counsel and so submits to the Court that said paragraph contains no allegation of new facts but, if anything, amounts to a conclusion of law which, as such, is incorrectly stated.

Answering said paragraph further, respondent says that he has no knowledge of any Power of Attorney given in favor of petitioner by the ultimate distributees of said estate. Respondent is advised and therefore avers that the ultimate distributees possess no right to nominate a stranger to the estate for appointment as administrator, thereby depriving him of rights vested in his office by treaty.

10. Answering paragraph 10, this respondent says that he is advised by counsel that said paragraph contains no allegation of new facts but, if anything, amounts to a conclusion of law which, as such, is incorrectly stated.

11. Answering paragraph 11, respondent is advised by counsel and so submits to the Court that the eleventh paragraph of said petition contains no allegation of new facts but, if anything, amounts to a conclusion of law which, as such, is incorrectly stated.

12. Answering paragraph 12, respondent is advised by counsel and so submits to the Court that the twelfth paragraph of said petition contains no allegation of new facts but, if anything, amounts to a conclusion of law which, as such, is incorrectly stated.

13. Answering said petition further, respondent states that he is advised by counsel and so submits to the Court

that the petition herein contains no sufficient allegations
of fact or in law which entitle petitioner to or war-
rant this Honorable Court in granting the relief
prayed and respondent claims as full benefit of this
objection as though he had specially pleaded same.

And now having fully answered, this respondent prays
that the Rule against him be discharged.

NICHOLAS G. LELY.

GEORGE C. VOURNAS,
Investment Building,
Attorney for Respondent.

DISTRICT OF COLUMBIA, ss:

Nicholas G. Lely, being first duly sworn according to
law, on oath deposes and says that he has read the fore-
going answer by him subscribed and knows the contents
thereof and that the facts therein stated upon his personal
knowledge are true and those stated upon information and
belief he believes to be true.

NICHOLAS G. LELY.

Subscribed and sworn to before me this 10th day of
May, 1934.

[SEAL.]

W. CAMERON BURTON,
Notary Public, D. C.

(Endorsement: Answer to Rule to show cause and for
the purpose thereof to the Bill of Complaint. Filed May
11, 1934. Theodore Cogswell, Register of Wills, D. C.,
Clerk of Probate Court.)

30

Finding of Facts.

This cause came on to be heard upon the petition of
Abraham Kalinoglou for the removal of Nicholas G. Lely,
Administrator of the above named estate, and upon the
record, together with the admission by the respondent in
open Court that petitioner was naturalized a citizen of the
United States on December 10, 1928, the Court finds the
following facts:

1. That George Kalinoglou, a subject of the Republic
of Greece, but a resident of the District of Columbia at

the time of his death, died intestate December 24, 1933, leaving an estate within the District of Columbia to be administered.

2. That said George Kalinoglou was survived by his widow but no children or the descendants of any children, and by his father and mother and brothers and sisters, all of whom, except petitioner Abraham Kalinoglou, are aliens, being citizens and residents of Greece.

3. That on January 26, 1934, acting upon the petition of Nicholas G. Lely, First Secretary of the Legation of Greece and Acting Consul of Greece in the District of Columbia, and vested with the powers of the Consular Officer of the Republic of Greece, filed on January 25, 1934,

31 this Court, without notice, appointed said Lely as administrator of said decedent's estate and he thereafter took his oath of office and qualified and is engaged in the administration of the estate under letter of administration issue- to him.

4. That no emergency existed for the appointment of an administrator at the time the respondent Nicholas G. Lely applied to and was appointed by the Court.

5. That petitioner Abraham Kalinoglou was naturalized a citizen of the United States on December 10, 1928, and is a resident of the District of Columbia and qualified to act as administrator of the decedent's estate under the provisions of the Code of Laws of the District of Columbia.

Conclusions of Law.

Upon the record and the facts found, the Court concludes, as a matter of law:

1. That the treaties existing between the United States and the Republic of Greece, 33 Stat. 212, and the most favored nation Sweden, 37 Stat. 1479, do not supersede the prior rights of administration conferred upon relatives by the Code of Laws of the District of Columbia, nor do they contain any provision that the Consular's right to be administrator shall be exclusive.

2. That the absence of the petitioner Abraham Kalinoglou from the District of Columbia at the time of decedent's death did not disqualify him from being appointed administrator of the decedent's estate upon his return to the District of Columbia; non-residence not being one of the

grounds of disqualification provided by Section 261 of the Code.

32 3. That the appointment of Nicholas G. Lely as administrator of the decedent's estate was improvidently made and his letter of administration shall be revoked.

June 29th, 1934.

DANIEL W. O'DONOGHUE,
Justice.

(Endorsement: Findings of Fact and Conclusions of Law. Filed June 29, 1934. Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.)

33 *Decree Revoking Appointment of Nicholas G. Lely, Administrator, and Appointing Abraham Kalinoglou Successor Administrator. Bond \$3,000.00.*

This cause came on to be heard upon the petition of Abraham Kalinoglou, the rule issued thereon, and the answer thereto of the respondent Nicholas G. Lely, Administrator, and also upon his admission in open Court that the petitioner Abraham Kalinoglou was naturalized a citizen of the United States on the 10th day of December, 1928, and thereupon, upon consideration thereof, it is, by the Court, this 29th day of June, A. D. 1934, adjudged, ordered and decreed:

First. That the order passed herein on the 26th day of January, 1934, appointing Nicholas G. Lely, the First Secretary of the Legation of Greece and Acting Consul of Greece in the District of Columbia, and vested with the powers of a Consular Officer of the Republic of Greece, as Administrator of the above named decedent's estate, is hereby vacated and his appointment is hereby revoked.

Second. That the letter of administration issued to said Administrator, Nicholas G. Lely, upon the estate of the decedent, is hereby ordered to be returned to this Court and be cancelled by the Register of Wills.

34 *Third.* That said petitioner Abraham Kalinoglou is hereby appointed administrator of the estate of the said George Kalinoglou, and letters of administration shall issue to him upon his filing in this cause an undertaking, with approved surety, in the maximum penalty of

\$3,000.00, conditioned for the faithful performance of his trust.

Fourth. That upon said Abraham Kalinoglou qualifying as administrator, the said Nicholas G. Lely shall forthwith account to, pay over, and transfer to said Abraham Kalinoglou, administrator, the estate of the said George Kalinoglou and abide further order of the Court in the premises; all orders heretofore made in this cause which are not inconsistent with this order shall remain in full force and effect and inure to the benefit of the decedent's estate and said successor administrator.

DANIEL W. O'DONOGHUE,
Justice.

From this decree respondent Nicholas G. Lely, in open Court, notes an appeal to the United States Court of Appeals for the District of Columbia, and the penalty of his bond to operate as a supersedeas is hereby fixed at \$5,000.00, or \$100.00 for costs, or he may deposit \$50.00 in the Registry in lieu of cost bond.

DANIEL W. O'DONOGHUE,
Justice.

(Endorsement: Decree revoking appointment of Nicholas G. Lely, Administrator, and appointing Abraham Kalinoglou as such, etc. Filed, June 29, 1934. Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.)

35

Memorandum.

1934, July 6.—Receipt of Register of Wills for deposit of \$50, in lieu of Undertaking on Appeal.

36

Assignment of Errors.

The Court erred:

1. In holding that the Consular Convention between the United States and the Republic of Greece (33 Stat. 212) and the Treaty between the United States and Sweden (37 Stat. 1479) which is made part of the said Consular Convention between the United States and Greece by reference under "the most favored nation clause", does not grant a paramount right to the Acting Consul of Greece to ad-

minister the estates of deceased Greek nationals as against any stranger to said estate.

2. In revoking the appointment of Nicholas G. Lely, acting consul of Greece, as administrator of said estate, the petition for letters of administration of the said Acting Consul having been filed and his appointment made according to law and the established procedure of said Court.

3. In granting letters of administration to Abraham Kalinoglu, brother of the decedent but a stranger to the estate, the ultimate distributees of the estate being the wife and father of the decedent, citizens and residents of Greece.

GEORGE C. VOURNAS,
Investment Building,
Attorney for Nicholas G. Lely.

Service of a copy of the foregoing Assignment of Errors acknowledged this 5 day of July, 1934.

GEORGE C. GERTMAN,
Attorney for Abraham Kalinoglu.

(Endorsement: Assignment of Errors. Filed July 6, 1934. Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.)

37 *Designation of Record.*

The petitioner, Nicholas G. Lely, having perfected the appeal herein to the United States Court of Appeals for the District of Columbia, on the — day of July, 1934, hereby requests the Clerk of the Supreme Court of the District of Columbia to prepare a transcript of the record on appeal, including therein the following papers and proceedings, namely:

1. Petition of Nicholas G. Lely for letters of administration filed on, to wit, January 25, 1934.

2. Letter addressed by Reid and Vournas, counsel for Nicholas G. Lely, to the Register of Wills, on January 25, 1934.

3. Supplemental petition filed by Nicholas G. Lely.

4. Rule to Show Cause and petition of Abraham Kalinoglu for revocation of the order or decree of the Court dated January 26, 1934, appointing Nicholas G. Lely ad-

ministrator of said estate, and for revocation and surrender of his letters of administration granted to Nicholas G. Lely on February 20, 1934, and for petitioner Kalinoglu's appointment as administrator and for letters of administration upon the decedent's estate, etc.

5. Answer of Administrator Nicholas G. Lely to Rule to Show Cause, etc.

6. Finding of Facts and Conclusion of Law by the Court.

7. Decree signed by the Court on June 29, 1934, revoking the appointment of Nicholas G. Lely and appointing Abraham Kalinoglu administrator.

8. Memorandum of filing of appeal bond.

38 9. Assignment of Errors.

10. This Designation.

GEORGE C. VOURNAS,
Investment Building,
Attorney for Nicholas G. Lely.

Service of a copy of the foregoing Designation of Record acknowledged this 5 day of July, 1934.

GEORGE C. GERTMAN,
Attorney for Abraham Kalinoglu.

(Endorsement: Designation of Record. Filed July 6, 1934. Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.)

39 Supreme Court of the District of Columbia, Holding
a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Theodore Cogswell, Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify the foregoing pages, numbered from 1 to 38, inclusive, to be true copies of the originals of certain papers on file in the office of the Register of Wills, Clerk of the Probate Court, in case No. 46,076 estate of George Kalinoglu, also known as George Kalin, deceased, wherein Nicholas G. Lely is appellant, and Abraham Kalinoglu is appellee, the same constituting a full, true, and correct transcript of record of proceedings had in said cause according to the Designation of counsel filed therein and made a part hereof.

I further certify, That a cash deposit of \$50.00 in lieu of the bond for appeal was duly made by said appellant, on the Sixth day of July, A. D. 1934.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Probate Court, this 11th day of September, A. D. 1934.

(Seal of Supreme Court of the District of Columbia,
Probate Jurisdiction.)

THEODORE COGSWELL,
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

Endorsed on cover: District of Columbia Supreme Court. No. 6306. Nicholas G. Lely, Appellant, vs. Abraham Kalinoglu. United States Court of Appeals for the District of Columbia. Filed Sep. 14, 1934. Henry W. Hodges, Clerk.

(5485-C)

FILED DEC 13 1934

Henry W. Hodges

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

—
No. 6306.
—

NICHOLAS G. LELY, *Appellant*,
vs.
ABRAHAM KALINOGLU, *Appellee*.

—
BRIEF FOR APPELLANT, NICHOLAS G. LELY.
—

HUGH REID,
GEORGE C. VOURNAS,
Investment Building,
Attorneys for Appellant.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

No. 6306.

NICHOLAS G. LELY, *Appellant*,

vs.

ABRAHAM KALINOGLU, *Appellee*.

BRIEF FOR APPELLANT, NICHOLAS G. LELY.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Supreme Court of the District of Columbia revoking the appointment of appellant (who is the Director of the Consular Office of the Legation of Greece) as administrator of the estate of George Kalinoglu, a resident Greek alien, and appointing the appellee, who is a brother of decedent, but not a distributee of the estate. Appellant was appointed on February 20, 1934, and duly qualified. On April 25, 1934, the appellee filed his petition praying revocation of appellant's appointment and further praying his own appointment,

basing his claim upon his own alleged right as brother of decedent and further upon powers of attorney* from decedent's father and wife, they being aliens and residents of Greece. Thereupon a rule to show cause issued and the appellant made answer. From the subsequent decree revoking appellant's appointment and appointing appellee, the appellant Lely appealed.

ASSIGNMENT OF ERRORS.

The Court erred:

I. In holding that the Consular Convention between the United States and the Republic of Greece (33 Stat. 212) and the Treaty between the United States and Sweden (37 Stat. 1479) which is made part of the said Consular Convention between the United States and Greece by reference under "the most favored nation clause", does not grant a paramount right to the Acting Consul of Greece to administer the estates of deceased Greek nationals as against any stranger to said estate.

II. In revoking the appointment of Nicholas G. Lely, Acting Consul of Greece, as administrator of said estate, the petition for letters of administration of the said Acting Consul having been filed and his appointment made according to law and the established procedure of said Court.

III. In granting letters of administration to Abraham Kalinoglu, brother of the decedent but a stranger to the estate, the ultimate distributees of the estate being the wife and father of the decedent, citizens and residents of Greece.

*These powers of attorney were revoked subsequent to the final decree in this suit and the revocation filed with the papers in the case.

ARGUMENT.

This entire case hinges essentially upon the extent of the right of Consuls of the most favored nation to administer the estates of their deceased nationals.

1. *The Consular Convention with Greece confers all of the rights of Consuls of the most favored nations upon Consuls of Greece.*

This proposition has been so well established by a long line of judicial decisions that it cannot be questioned today. The effect of the "most favored nation" clause* in the Greek Consular Convention (hereinafter referred to as the Greek Treaty) has been construed by this Court to include the pertinent provisions of the Treaty with Sweden.** *Diamantopoulos v. Glekas*, 56 D. C. App. 151; 11 Fed. 2d (200).

*(Vol. 33, Statutes at Large, pp. 2122, 2129.) "In the case of the death of any citizen of the United States in Greece, or of a Greek subject in the United States, without having any known heirs or testamentary executors by him appointed, the competent local authorities shall give information of the circumstances to the consular officers of the nation to which the deceased belongs in order that the necessary information may be immediately forwarded to the parties interested.

"In all that relates to the administration and settlement of the estates, the consular officers of the high contracting parties shall have the same rights and privileges as those accorded in the United States of America and Greece respectively to the consular officers of the most favored nation."

**"In the event of any citizen of either of the two contracting parties dying without will or testament, in the territory of the other contracting party, the consul-general, consul, vice-consul-general, or vice-consul of the nation to which the deceased may belong, or, in his absence, the representative of such consul-general, vice-consul-general or vice-consul, shall, so far as the laws of each country will permit and pending the appointment of an administrator and until letters of administration have been granted take charge of the property left by the deceased for the benefit of his lawful heirs and creditors, and, moreover, have the right to be appointed as administrator of such estate.

"It is understood that when, under the provisions of this article, any consul-general, consul, vice-consul-general, or vice-consul, or the representative of each or either, is acting as executor or administrator

The effect of the "most favored nation" clause is to confer upon the Consuls of all nations having such provisions in their treaties all the rights with regard to the subject matter that are possessed by the most favored nation or nations. While the long line of interpretative decisions develops much difference of opinion as to the effect of incorporation by reference, we can find none that denies the fact. Most of the cases deal with the Argentine Treaty, but in accordance with the general principle, the Treaties with Austria, Argentina, Spain, Persia, Peru, Paraguay, and Sweden have been held to be incorporated into the treaties with Italy, Greece, Russia and other nations.

In re Chio, 157 Cal. 552, 108 Pac. 516.

Rocca v. Thompson, 223 U. S. 317.

Santovincenzo v. Egan, 52 S. Ct. Rep. 81, 284 U. S. 30.

Madaloni's Estate, 141 N. Y. S. 323, 79 Misc. 653.

Matter of Ricardo, 140 N. Y. S. 606, 79 Misc. 371.

Lombardi's Estate, 138 N. Y. S. 1007, 78 Misc. 689.

Dagheri's Estate, 137 N. Y. S. 175.

In re D'Adamo, 141 N. Y. S. 1103.

Diamantopoulos v. Glekas, 56 D. C. App. 151, 11 Fed. 2d (200).

Lambrasciano's Estate. 77 N. Y. S. 1040, 38 Misc., 415.

Fattosini's Estate, 67 N. Y. S. 1119.

McEvoy v. Wyman, 191 Mass. 276, 77 N. E. 379.

Carpigiani v. Hall, 172 Ala. 287, 55 So. Rep. 248.

In re Sinoveie, 86 A. 917, 80 N. J. Eq. 260.

of the estate of one of his deceased nationals, said officer or his representative shall, in all matters connected with, relating to, or growing out of the settlement of such estates, be in such capacities as fully subject to the jurisdiction of the courts of the country wherein the estate is situated as if said officer or representative were a citizen of that country and possessed of no representative capacity whatsoever." (37 Stat. 1479.)

2. *The Greek and Swedish Treaties by their express terms confer a paramount right upon the Greek Consul to administration of the estates of his deceased nationals.*

The language of the Swedish treaty is plain. Two rights are conferred upon Consuls: (1) to take possession of the estates of their deceased nationals pending administration and (2) to be appointed administrators of such estates. The first of these rights is subject to the qualification "so far as the laws of each country will permit". The second is without any qualification in the ordinary rules of grammatical construction. Treaties are to be understood in their ordinary meaning as understood in the public law of nations.

Santovincenzo v. Egan, 284 U. S. 30.

"Writers of authority agree that treaties are to be interpreted upon the principles which govern the interpretation of contracts in writing between individuals and are to be exercised in the utmost good faith with the view to making effective the purposes of the high contracting parties."

Sullivan v. Kidd, 254 U. S. 433.

Moore's International Law Digest, Vol. 5, p. 249.

Treaties are to be construed literally, but it is not necessary in this case, as the plain letter of its terms will permit no deviation. We are well aware that certain state courts have assumed to narrow the phrase:

"shall be entitled to be appointed administrator" by coupling with it the qualification of the preceding clause.

(See *Matter of D'Adamo*, 212 N. Y. 214; *Papano v. Cerri*, 93 Ohio St. 345; *Servas Estate*, 169

Cal. 240; Austro-Hungarian Consul v. Westphal, 120 Minn. 122; Chryssikos v. DeMarco, 134 Md. 533.)

Whatever may be said as to the grammatical basis for these opinions, it appears from their language that they all rest upon the conclusion that the treaty making power could not have intended to encroach upon a subject matter peculiarly reserved to the States and that therefore the qualification must therefore apply to both rights, *i. e.*, that of possession prior to administration and to administration afterward. The manner of negotiating and making treaties is not, however, conducive to carelessness or inexactitude and the high contracting powers can be assumed to have meant precisely what they said. It is upon the principle that treaties are carefully framed, that they are subject to the rules of construction of written contracts.

(Sullivan v. Kidd, 254 U. S. 433.)

The history of this language in the Swedish Treaty clearly indicates a different import from the language of the Argentine Treaty, the one containing the previously most favored nation clause. The latter Treaty merely gave the Consul the right to "intervene" in administration. That clause made a consul eligible to be appointed administrator. (Rocca v. Thompson, 233 U. S. 317.) If the Swedish Treaty is to be distinguished as widening the consular right of administration, certainly it is not done by the decree in the Court below, for reduced to its simplest terms, that opinion would make appellant eligible only after the last creditor referred to in Section 116 of the D. C. Code had failed.

Nor is the conclusion of the several State Courts in the D'Adamo and related cases in harmony with that of the Supreme Court of the United States as expressed by the Justice Day in the case of *Rocca v. Thompson*, 223 U. S. 317. After finding the language of the Argentine Treaty not broad enough, the learned Justice states:

“Had it been the intention to commit the administration of estates of citizens of one country dying in the other exclusively to the Consul of the foreign nation, it would have been very easy to have declared that purpose in unmistakable terms. For instance, *that was the purpose* in the treaty made with Peru * * * and in the Convention between the United States and Sweden proclaimed March 20, 1911, it is provided * * *:

‘In the event of any citizen of either of the two contracting parties dying without will or testament, in the territory of the other contracting party, the consul-general, consul, vice-consul-general, or vice-consul of the nation to which the deceased may belong or in his absence, the representative of such consul-general, vice-consul-general, or vice-consul, shall, so far as the laws of each country will permit and pending the appointment of an administrator and until letters of administration have been granted take charge of the property left by the deceased for the benefit of his lawful heirs and creditors, and, moreover, have the right to be appointed as administrator of such estate.

‘It is understood that when, under the provisions of this article, any consul-general, consul, vice-consul-general, or vice-consul, or the representative of each or either, is acting as executor or administrator of the estate of one of his deceased nationals, said officer or his representative shall, in all matters connected with, relating to, or grow-

ing out of the settlement of such estates, be in such capacities as fully subject to the jurisdiction of the courts of the country wherein the estate is situated as if said officer or representative were a citizen of that country and possessed of no representative capacity whatsoever.' ” (37 Stat. 1479.)

With regard to the theory that the treaty making power could not have intended to encroach upon the peculiar rights of the several states, we draw attention only to the fact that no such right is involved in this case.

It has also been urged that the right of possession of the estate being of lesser importance than the right of administration, therefore the high contracting powers cannot be presumed to have intended to confide the latter to consuls subject to less restrictions. Without questioning the wisdom of the conclusion that administration is the most valuable right, we note that the treaty with Germany* (also incorporated by reference with the Greek treaty), confers a more sweeping power, *i. e.*, the right of possession of the distributive shares of their non-resident nationals—and with less restrictions.

3. The consular rights conferred in the treaty are within the treaty-making power.

This power has been repeatedly affirmed, not only by State Courts but by the United States Supreme

“A Consular Officer of either High Contracting Party may in behalf of his non-resident countrymen receipt for their distributive shares derived from estates in process of probate or accruing under the provisions of so-called Workmen's Compensation Laws or other like statutes provided he remit any funds so received through the appropriate agencies of his Government to the proper distributees, and provided further that he furnish to the authority or agency making distribution through him reasonable evidence of such remission.” (44 Stat. 2132. Art. 25.)

Court as well. The disposition of the property of aliens dying within the United States and the relation of foreign governments to the administration of their estates is clearly within the treaty-making power.

Lambrascianos Estate, 77 N. Y. Sup. 1040.

Rocca v. Thompson, 223 U. S. 317.

Moore's Int. Law Digest, Vol. 5, p. 311.

Fattosini's Estate, 67 N. Y. Sup. 1119.

Santovincenzo v. Egan, 284 U. S. 30.

and cases cited therein.

Earlier views of diplomatic officers of the United States have been urged as against the power of the United States to engage in such treaties binding the states. But as early as *Ware v. Hylton*, 3 Dail 199, the United States Supreme Court held that the "laws of the several states and even their constitutions must yield to the treaty making power. Once granted that the subject matter is within the treaty making power, there can be no legal enactment short of the Federal Constitution itself that can override its provisions." The treaty making power of the United States superseded that of the several states.

Missouri v. Holland, 252 U. S. 416.

"The treaty making power is broad enough to cover all subjects that properly pertain to our foreign relations, and agreement with respect to the rights and privileges of citizens of the United States in foreign countries and of nationals of such countries in the United States and the disposition of the property of aliens dying within the territory of the respective parties is within the scope of that power and any conflicting law of the state must yield."

Santovincenzo v. Egan, 284 U. S. 30.

4. *Assuming that the rights of the Consuls are not paramount, they were superior to those of appellee.*

The consul is always entitled to administration as against a stranger to the estate. (*Diamantopoulos v. Glekas*, 56 D. C. App. 151.)

The word "stranger" is in its general legal significance opposed to the word "privy". (*O'Donnell v. McIntyre*, 118 N. Y. 156.)

Strangers to a suit are those not *directly* interested in the subject matter. (*U. S. v. Henderlong*, 102 Fed. 24.)

Strangers are third persons; generally all parties in the world except parties and privies.

State v. Mills, 169 p. 1171, 23 N. M. 549.

Balfour v. Burnett, 28 Ore. 72, 41 p. 1.

Strouds Judicial Dict. V. 3, p. 1945.

Bouvier's Law Dict. V. 2, p. 3156.

In this sense, it must be noted that the language of this Court in *Diamantopoulos v. Glekas* is "stranger to the *estate*". It would therefore appear that the rule laid down in that case would require the appellee to be a privy to the *estate* itself and not to its mere *administration, i. e.*, to the subject matter and not to the legal procedure incident to its liquidation and distribution. The wife and parents of decedent are thus privies to the estate, but the appellee is not.

II. *The Court erred in revoking the petition of Lely.*

While it is well settled in this jurisdiction that letters of administration may be revoked if based upon a misconception or misstatement of facts (*Emery v. Emery*, 45 D. C. App. 577), yet there appears to have been

none. The Court below apparently reasons to the assumption that there was a misconception of the eligibility of Abraham Kalinoglu to the appointment. However, if Kalinoglu did not have a superior right to Lely, the misconception falls. Nor can any misconception or misstatement be based upon the finding that no emergency existed or that there was lack of notice. Kalinoglu's petition (page 9 of transcript) indicates that he arrived in the United States about two months after his brother's death or approximately February 13, 1934. Lely's petition was filed January 25, 1934. The issuance of a citation was, under Probate Rule 7, in the discretion of the Court if Kalinoglu was within the District of Columbia. He was not. No notice was therefore necessary. The letters of administration were therefore not improvidently granted.

“Where letters of administration have been granted in the estate of a decedent who is not a citizen of the United States and said grant was made prior to the application of a non-resident creditor, as the person first entitled thereto, said grant of administration will not be revoked in the absence of fraud or mistake, at the instance of a non-resident claimant.”

Chryssikos v. DeMarco, 134 Md. 533.

III. *The Court erred in granting letters of administration to Appellee.*

This proposition is substantially shown in the preceding argument. If Lely was the person entitled, Kalinoglu was not. Lely had, in the broadest interpretation of the treaty, a paramount right and, in the narrowest interpretation, a superior right to Kalinoglu.

CONCLUSION.

For the reasons set forth, we respectfully submit that the Court below erred in the several specifications set forth and that the decree should be modified accordingly.

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UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED DEC 29 1934

Henry W. Hodges

CLERK

In the United States Court of Appeals for the
District of Columbia

No. 6306

NICHOLAS G. LELY,
Appellant,

vs.

ABRAHAM KALINOGLU,
Appellee.

BRIEF FOR APPELLEE.

GEORGE C. GERTMAN,
Attorney for Appellee.

In the United States Court of Appeals for the
District of Columbia

No. 6306

NICHOLAS G. LELY,
Appellant,

vs.

ABRAHAM KALINOGLU,
Appellee.

BRIEF FOR APPELLEE.

THE FACTS

George Kalinoglu (appellee's brother), a subject of Greece but a resident of the District of Columbia, died intestate December 24, 1933, leaving a small estate subject to administration. He was survived by his widow, father, mother, brothers and sisters, all of whom being subjects and residents of Greece except appellee who became a naturalized citizen of the United States December 10, 1928, and a resident of the District of Columbia.

DISTRICT OF COLUMBIA CODE PROVISIONS

**Those Applicable to Distribution
of the Decedent's Net Estate**

By Sec. 376 decedent's alien widow takes half.

By Sec. 380 decedent's alien father takes the remaining half.

Those Applicable to Persons Entitled to Administer

By Sec. 261 decedent's alien widow and father are disqualified as administrators; this disqualification applies to all of decedent's kindred except the appellee.

By Sec. 287 the decedent's alien kindred are excluded, and administration shall be granted as if they were not alive.

By Sec. 279 appellee alone is entitled to administer.

By Sec. 288 appellee is also entitled to administer as a creditor of the estate.

The Code contains no provision for the appointment of Consuls or their representatives; being aliens, they too are disqualified under Sec. 261.

PETITIONS FOR APPOINTMENT OF ADMINISTRATOR

1. Claiming the right to administer the estate solely by virtue of the existing treaties between the United States and Greece and Sweden, appellant, as First Secretary and Acting Consul of Greece, on January 25, 1934, filed a petition for that purpose (R. 1-5), in which he alleged that he had made "diligent search and inquiry at such places and among such persons" as would be likely to disclose decedent's Will if one existed; that the property left by the decedent which came to his knowledge "after diligent search" was the sum of \$1,653.65 on deposit in the Riggs National Bank, a small amount of cash and personal effects, and half interest, valued at \$200, in a lunchroom business at 309 N Street, Northwest, and also that "after diligent inquiry" he learned that the decedent's debts consisted of his funeral expenses of \$295 and current bills of about \$300. Appellant did not allege, however, that

he had made "diligent" inquiry to ascertain whether the decedent left any kindred competent under Sections 276-288 of the Code to administer his estate, nor that there was any emergency or haste for the appointment of an administrator.

At the same time appellant's counsel wrote the Register of Wills stating that appellant had written a letter to the Ministry of Foreign Affairs regarding the heirs and next of kin of the decedent (R. 5, 6).

On the following day, January 26, 1934 (R. 10), and without notice to decedent's kindred, the Court appointed appellant administrator of decedent's estate and granted him letters of administration.

On April 30, 1934—5 days after appellee filed his petition, *infra*, giving the names and relationship of all the decedent's kindred—appellant filed a supplemental petition furnishing that information (R. 6, 7).

2. Claiming the sole and preferential right under the law of the District of Columbia to administer his brother's estate, and also that appellant was improvidently appointed administrator, appellee, on April 25, 1934, filed a petition praying for the revocation of appellant's appointment, the cancellation of his letters of administration and for his, appellee's appointment as administrator (R. 8-17).

Based upon said petition, the Court on April 25, 1934, ordered the appellant to show cause why the order of January 26, 1934, appointing him administrator, should not be revoked and his letters of administration surrendered and cancelled, and also why appellee should not be appointed administrator of the estate in his stead (R. 7, 8).

On May 11, 1934, appellant answered said petition and rule (R. 17-20).

HEARING BY THE COURT

1. On June 29, 1934, the matter came on for hearing before Mr. Justice O'Donoghue who made certain findings of fact (R. 20, 21), with which appellant finds no fault.

2. On the same day the Court made certain conclusions of law (R. 21, 22), containing the question of law presented, *infra*.

3. Thereupon the Court entered an order vacating the appointment of appellant as administrator, directed him to return to the Court for cancellation his letters of administration, appointed appellee administrator and directed appellant to account to him for the decedent's estate (R. 22, 23). From this decree appellant appeals.

THE QUESTION PRESENTED

The question presented upon this appeal is whether the trial Court erred in holding the law to be (R. 21)—

“That the treaties existing between the United States and the Republic of Greece, 33 Stat. 212, and the most favored nation Sweden, 37 Stat. 1479, do not supersede the prior rights of administration conferred upon relatives by the Code of Laws of the District of Columbia, nor do they contain any provision that the Consular's right to be administrator shall be exclusive.”

ARGUMENT

1. Appellant's statement (Brief, p. 3) that—

“This entire case hinges essentially upon the extent of the right of Consuls of the most favored nation to administer the estates of their deceased nationals”—

is accepted as substantially correct.

2. But appellant's premise—

(Brief, p. 5) "The Greek and Swedish treaties by their express terms confer a paramount right upon the Greek Consul to administration of the estates of his deceased nationals",

(Brief, p. 10) "Assuming that the rights of the Consuls are not paramount, they were superior to those of appellee"—

is controverted.

Since the decision by the United States Supreme Court of *Rocco vs. Thompson*, 223 U. S. 317, the Courts, in interpreting the Greek-Swedish treaties, have uniformly held that they do not supersede the prior statutory rights to administration, nor do they contain any provision that the Consular's right to administer shall be exclusive.

Matter of D'Adamo, 212 N. Y. 214.

Chryssikos *vs.* Demarco, 134 Md. 533.

In Re: Chaonssis Estate, 139 Wash. 479.

Papano *vs.* Cerri, 93 Ohio St. 345.

Servas Estate, 169 Cal. 240.

Austro-Hungarian Consul *vs.* Westphal, 120 Minn. 122.

The facts and legal contentions in matter of D'Adamo, 212 N. Y. 214, with slight variation in facts only, are identical with the facts and legal contentions in the case at bar. At page 217 of the learned opinion written by Mr. Justice Cardozo, he said—

"It is urged in support of the Surrogate's decree that because the decedent's brother was not entitled to share in the estate, he was not entitled to administer upon it. The decedent left a wife and an infant child in Italy. His entire estate belongs to them. They are not

qualified to act as his administrators. The brother, under the law as it stood when letters were refused to him, and as it stands today, is qualified to act unless his lack of interest in the estate disqualifies him. We think that it does not."

And at page 225, the learned Justice also said—

"The convention with Sweden was intended to confirm the powers thus established by international comity, and to facilitate their exercise. Consuls are to have the right, where the estate is in peril, to intervene at once, and if other representatives are lacking, they are, moreover, to have the right to be appointed administrators themselves. They are to have this right, not to displace others competent under local law, but the better to fulfill their inherent function as provisional conservators. If there is no qualified relative within the jurisdiction and no one else to whom our law gives the right of administration, the consular representative under this treaty may come forward and demand the grant of letters."

3. Treaties are made presumably to remove disabilities under existing law to meet arising contingencies and to create and establish new rights and relations between the contracting Countries. What disabilities were removed and what new rights were created and established between the Countries by the treaty with Sweden insofar as it pertains to the conservation and administration of estates of aliens dying in the District of Columbia?

Under Sec. 261 of our Code (which is a prior Federal law), an alien is ineligible to act as administrator. This ineligibility necessarily extends to alien Consuls.

Conceiving that instances would arise, as doubtless they have in the past, where the alien's kindred are unknown, or, if known, are also aliens and therefore ineligible to act as statutory administrators, as in the case of *Diamantopoulos vs. Glekas*, 56 D. C. App. 151; 11 Fed. (2d) 200, the Swedish treaty, *solely to meet such contingencies*, removed the Consul's alienage disability to allow him to act as administrator.

Also conceiving that instances would arise, as doubtless they have in the past, where the identity of the alien's kindred are unknown and as a consequence the appointment of the statutory administrator would be delayed and the safety of the estate perhaps imperiled by lack of lawful authority in someone to act in the interim, the Swedish treaty, *solely to meet such contingency*, gave the Consul the right, not theretofore enjoyed, to step in and take charge of the alien's estate pending the appointment of the statutory administrator, unless the exercise of such right interfered with some statutory law of the place where the alien died, such as the appointment of a Public Administrator in California. See *In Re: Estate of Ghio*, 157 Cal. 552, affirmed in 223 U. S. 317.

4. The Swedish treaty contemplates the absence of all competent statutory persons at the place where the alien dies to administer his estate, before it becomes operative in that respect. *Diamantopoulos vs. Glekas*, *supra*.

The Swedish treaty also recognizes—

(a) Its application only in case of the intestacy of the alien leaving an estate subject to administration.

(b) The supremacy of the laws of the place where the alien dies in relation to both the appointment of an administrator and the conservation of his estate.

(c) The probability of delay in the appointment of the statutory administrator.

(d) The possibility of waste to the estate owing to the delay in ascertaining the identity, competency and appointment of the statutory administrator.

(e) The possibility of the absence, as here, of any law for the appointment of a conservator or Public Administrator.

5. Mr. Justice Day in the decision of *Rocco vs. Thompson*, ante, did not make the comment upon the Swedish treaty which the appellant on page 7 of his brief inaccurately ascribes to him. What Mr. Justice Day said, was—

“Had it been the intention to commit the administration of estates of citizens of one country, dying in another, exclusively to the consul of the foreign nation, it would have been very easy to have declared that purpose in unmistakable terms. For instance, where that was the purpose, as in the Treaty made with Peru in 1887, it was declared in Article 33, as follows:

‘Until the conclusion of a consular Convention, which the high contracting parties agree to form as soon as may be mutually convenient, it is stipulated that, in the absence of the legal heirs or representatives, the consuls or vice-consuls of either party shall be ex-officio the executors or administrators of the citizens of their nation who may die within their consular jurisdictions, and all their countrymen dying at sea, whose property may be brought within their district’ ”.

The above quotation is followed in the decision by an entirely new paragraph referring to the Swedish treaty but having no relation whatsoever to the Peruvian

treaty. Mr. Justice Day did not speak of the Swedish treaty the same as he had spoken of the Peruvian treaty, nor did he imply that they are alike. See *Chryssikos vs. Demarco*, 134 Md. 533, at page 542 where Mr. Chief Justice Boyd points out that what Mr. Justice Day said about the Peruvian treaty did not and could not apply to the treaty with Sweden.

6. The facts in *Dimantopoulos vs. Glekas*, ante, were essentially unlike those in the present case, therefore that decision lends no possible support to the appellant's contentions. That decision was based upon the fact that the decedent Pappas, an alien, had died without leaving any competent statutory relatives or creditors to administer his estate. Inasmuch as the Swedish treaty contemplated the state of facts existing in that case, it necessarily followed that the appointment of the stranger would be revoked. In the present case, however, appellee is one of the persons authorized by and competent under the Code to act as administrator and it was so found as a fact by the lower Court (R. 20, 21).

7. To hold that the Consul has the unqualified and paramount right to administer an alien's estate, we must discard as meaningless, the clause—

“shall, so far as the laws of each country will permit and *pending the appointment of an administrator* and until letters of administration have been granted take charge of the property left by the deceased for the benefit of his lawful heirs and creditors,”

because, in the event, there would be no occasion for the Consul taking charge of the alien's estate “*pending the appointment of an administrator*” as he, himself, would

immediately take charge as the appointed administrator.

The Swedish treaty gives the Consul a right where otherwise he would have none, i. e., the right to administer in the absence of competent statutory persons, and, pending their ascertainment, the right to conserve the estate.

Moreover, in the case at bar, the Greek treaty itself which the appellant invoked, never became operative because, according to its provisions, its operation is dependent upon an alien Greek dying "*without having any known heirs or testamentary executors.*" While the appellant's verified petition (R. 1, 2) alleged that no will was found, it avoided the essential jurisdictional allegation that the decedent died "*without having any known heirs*".

8. This Court in *Williams vs. Williams*, 24 App. D. C. 214, held—

"The right of administration is a valuable right, and those upon whom the right has been conferred by statute should not be deprived of it, except as the statute has provided".

And this Court also held in *Williams vs. Williams*, 25 App. D. C. 32—

"That where a person is entitled by law to act as administrator of an estate, and is a fit and qualified person, such person is entitled to the sole administration of the estate . . ."

9. As appellant was not entitled to be appointed administrator, his appointment was improvidently made and he was subject to removal. *Emery vs. Emery*, 45 App. D. C. 577.

CONCLUSION

1. The law of the present case is ruled by *In Re D'Adamo*, 212 N. Y. 214, in which the Court of Appeals of New York, reversing prior decisions of subordinate Courts of that State, held that the treaties between the United States and Greece and Sweden do not supersede the prior statutory rights of administration conferred upon competent relatives, nor do they contain any provision that the Consular's right to be administrator shall be exclusive.

2. The conclusions of law and the appealed decree were right and the decree should be affirmed with costs.

Respectfully submitted,

GEORGE C. GERTMAN,
Attorney for Appellee.

December 28, 1934.